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Citation: Gray, James and Woodley, Mick (2005) The relationship between academic legal education and the legal profession: the review of legal education in England and Wales and the teaching hospital model. *European Journal of Legal Education*, 1 (2). pp. 1-19. ISSN 1684-1360

Published by: Taylor & Francis

URL: <http://dx.doi.org/10.1080/16841360508522934>
<<http://dx.doi.org/10.1080/16841360508522934>>

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THE RELATIONSHIP BETWEEN ACADEMIC LEGAL EDUCATION AND THE LEGAL PROFESSION: THE REVIEW OF LEGAL EDUCATION IN ENGLAND AND WALES AND THE TEACHING HOSPITAL MODEL

In the UK the university sector presently faces uncertainty. Recent legislation¹ will radically change the way in which higher education is funded.² Universities are also increasingly subject to so-called market disciplines as a result of both institutional and subject-based auditing.³ The introduction of benchmarking has added to this process of external scrutiny at the subject level.⁴ Into the already uncertain environment that university law schools face has stepped the Law Society, the professional body representing the solicitors' branch of the profession, with a further challenge to the hard-pressed academic. In 2001 the Law Society instigated the first full review of the qualification scheme for solicitors for more than a decade, indicating that changes had occurred within the profession, higher education and the student population that justified such a review and that the piecemeal changes to the present scheme made over the last ten years required proper incorporation. Thus, the Law Society has again fanned the flames of a sporadic debate between university law schools and the profession. Writing in 1998 Boon stated that "the jurisdiction over the undergraduate programme was hotly contested [by the profession] with academic law schools in an atmosphere of mutual suspicion".⁵ Indicative of this suspicion was a 'spat' between the Law Society and the Society of Public Teachers of Law (SPTL)⁶ at the end of 1994 with even a threat of writs. Indeed, in the same edition of the SPTL Reporter which publicised this dispute, a leading academic described the profession's Joint Announcement on Qualifying Law Degrees as "mindless villainy behind [a] smiling cheek".⁷

Against this backcloth the Law Society set up a Training Framework Review Group consisting of members of the profession, of academic bodies and of its own Training Committee to make proposals for a revised qualification scheme. In its second Consultation Paper it is noted by the Review Group that "[t]he legitimacy of the Law

¹ See Higher Education Act 2004 and '*The future of higher education*' Cmnd 5735, (2003).

² Collier, R, provides an even longer list of changes presently faced by those working (and studying?) in UK universities, see 'The changing university and the (legal) academic career', (2002) 22 Legal Studies 1, at 14-15. But this is a phenomenon that is by no means confined to the UK, see Kelsey, J, 'Privatising the Universities' (1998) 25 Journal of Law and Society 51.

³ See, for example, Bradney, A, 'The Quality Assurance Agency and the Politics of Audit' (2001) 28 Journal of Law and Society 430-442, and Bradney, A, 'Accountability, the University Law School and the Death of Socrates' (2002) Web Journal of Current Legal Issues.

⁴ For contrasting views on the value and impact of benchmarking, see Bell, J, 'Benchmarking: A Pedagogically Valuable Process?' [1999] 2 Web Journal of Current Legal Issues and Bradney, A, 'Benchmarking: A Pedagogically Valuable Process? An Alternative View', (1999) 2 Web Journal of Current Legal Issues.

⁵ Boon, A, 'History is Past Politics: A Critique of the Legal Skills Movement in England and Wales', (1998) 25 Journal of Law and Society 151-169.

⁶ Subsequently re-named the Society of Legal Scholars.

⁷ Birks, P, 'Villainy with a Smiling Cheek' (Spring 1995) SPTL Reporter 16.

Society's interests in the quality and standards of law degrees is a question frequently raised among academic lawyers".⁸

As if to test the tolerance of academic lawyers further, in July 2002 the professional bodies entered into consultation with universities, law schools, law firms and chambers on issues of quality assurance in respect of the qualifying law degree. The consultation followed the decision of QAA to abandon periodic subject reviews. The report, entitled "The Way Forward"⁹ sets out a new proposed framework for quality assurance of qualifying law degrees as approved by the Joint Academic Stage Board and the Bar Council's Education and Training Committee and the Law Society's Training Committee. The framework specifies the right to issue, from time to time, guidance to law schools on issues relating to the curriculum¹⁰ reflecting the theme of employer involvement said to be implicit in the Higher Education White Paper,¹¹ advances the argument that the profession should issue guidance on resourcing qualifying law degrees and notes the preparation of guidance on what the professional bodies consider good practice in the review of qualifying law degrees with the strong recommendation that they be invited to nominate an external member of any reviewing group.¹²

If a debate has 'raged' for at least the last ten years over the 'proper' relationship between 'the academy' and the profession, it is probably true to say that that debate has taken place primarily within university law school common rooms and in academic journals rather than in solicitors' offices or barristers' chambers. Nonetheless it has led to a polarisation of views. The traditionalists argue that the study of law is an inherently worthwhile pursuit that need not be aimed at satisfying the demands of the professions which act only to constrain 'academic freedom'. Indeed it is often pointed out that less than half of those studying on law degrees go on to join the legal profession. The counter argument is that law is a vocational subject which, in an increasingly competitive and consumer-led market, should tailor legal training to commercial necessity. This paper contends that there is not inevitably a conflict between legal education in its own right and preparation for a professional legal career, or indeed for any career. Indeed, as Birks has rightly argued, law schools should not separate themselves from "the mission of producing good lawyers"¹³ just because graduates enter different careers nor should they

⁸ Second Consultation on a New Training Framework for Solicitors, (2003) para 19. Indeed in its response to the first Consultation the Society of Legal Scholars (SLS) advocated a system of co-regulation when it came to Entry Standards and Training. This, it was suggested, might follow the model used in New Zealand and most of Australia where such matters were "in the hands of an independent body chaired by a judge with representatives of the profession and the universities sitting on it", see <http://www.legalscholars.ac.uk/education/clementi.pdf>.

⁹ The academic stage of training for entry into the legal profession, quality assurance and qualifying law degrees (March 2003).

¹⁰ The report states that professional bodies will normally consult with JASB before issuing any guidance.

¹¹ Op.cit.

¹² The report indicates that this has the firm support of JASB. The SLS is hardly reassured by this claim, believing that the JASB lacks true representative status, see <http://www.legalscholars.ac.uk/documents/wf.doc>.

¹³ Birks, P, 'The academic and the practitioner' (1998) 18 Legal Studies 397 at 406.

artificially detach themselves from “the law in action, above all from the law in action in the courts”.¹⁴

Academic or practical?

As Hepple has reminded us, the dispute over the true role of a university education in law is by no means a new debate. As long ago as the 18th century Blackstone had a “twin vision of the university as a provider of both a civilised education and a foundation for professional practice” and a century later the Select Committee on Legal Education saw the “integration or unity of theory and practice ... [as being] the paradigm of a liberal legal education”.¹⁵ However, Hepple has also recorded that during the 20th century the academic and professional drew apart, the Ormrod Report¹⁶ having established what became an unintentionally rigid separation of academic, professional and continuing education. Moreover, despite Ormrod’s wish that the professions should not specify the content of a law degree for qualification, such a pattern was established and continued with the current Joint Announcement which, Hepple believes, stultified the development of the liberal law degree.¹⁷ The 1996 Report of the Lord Chancellor’s Advisory Committee on Legal Education and Conduct (ACLEC) was the first full-scale review of legal education and training since Ormrod.¹⁸ It championed an integrated, holistic approach to legal education and training that would see the removal of the barriers between academic and vocational. It favoured a move from subject-based prescription to a statement of outcomes. Response to ACLEC’s recommendations were mixed and its work, if not wasted, did not lead to significant change.

Even within the academic sector, the approach to the demands of the professional bodies and the practitioner has not been uniform and, at the risk of over-simplification, it may be that there is a distinction between old and new university law schools. Certainly Leighton traces the development of new university law schools from their roots, through their polytechnic phase and afterwards under the 1992 Further and Higher Education Act for England and Wales.¹⁹ She notes that the polytechnics were expected to be distinguishable from traditional universities by the “comprehensive range and character of [their] work, especially to non-degree students and part-time courses” and to foster “closer and more direct links with industry, business and the professions”.²⁰ Even more significant in the expansion of legal education, Leighton argues, was the establishment of the Council for National Academic Awards (CNAA) which enabled colleges and subsequently polytechnics to award their own degrees, including law degrees that added practical and vocational elements to the traditional ‘academic’ approach of the London

¹⁴ Ibid.

¹⁵ Hepple, B, ‘The Renewal of the Liberal Law Degree’ (1996) 55 CLJ 470.

¹⁶ The Report of the Committee on Legal Education (1971; Cmnd. 4595)

¹⁷ Joint Statement issued in 1995 and modified in 1999 by the Bar Council and the Law Society.

¹⁸ Appendix C of ACLEC’s First Report contains an outline of developments in legal education and training since Ormrod in 1971. For a further account, see Boon, A, ‘History is Past Politics: A Critique of the Legal Skills Movement in England and Wales’ (1998) 25 Journal of Law and Society 151-169.

¹⁹ Leighton, P, ‘New Wine in Old Bottles or New Wine in New Bottles?’ (1998) 25 Journal of Law and Society 85-101.

²⁰ Department of Education and Science, ‘A Plan for Polytechnics and Other Colleges’ (1966, Cmnd 3006).

(External) LL.B they already offered. Thus law teaching developed both on single honours courses in law and as part of other degrees (for example, business and surveying) but also at sub-degree level and on professional courses (for example, accountancy). According to Leighton this has resulted in the new university law schools being more likely to offer part-time and distance learning LL.Bs and joint honours degrees and their being the principal contributors to vocational course development and to CPD (continuing professional development). Not that the latter involvement has necessarily been completely without its costs since Leighton states:

“All of these courses are strongly externally regulated and have made considerable demands on both staff and students. Learning processes, assessment, and learning materials are also heavily prescribed This degree of control over courses and their delivery is in marked contrast to the relative autonomy and diversity of old universities regarding their academic programmes.”²¹

Perhaps, therefore, the more sanguine attitude in new university law schools to the profession's control of the content of both the academic and the vocational stages of legal education is unsurprising. Equally, involvement with professional practice has not been anathema to all old university law schools. Some have greeted the opportunity to provide the Legal Practice Course as a “welcome stimulus” and recognised that the “academic and the practical are not wholly divorced”.²² But not every attempt to embrace the vocational by old universities has met with success perhaps adding to mistrust and confirming prejudices.²³

What is legal education?

Is there an even bigger question implicit in the debate over the control of legal education? Twining challenges us to picture what it means to be a ‘law teacher’ and to work in a law department and, perhaps more importantly, asks “who are law students?”.²⁴ He reminds us that law schools need not, indeed perhaps that they should not, have limited objectives but should move towards “a more self-conscious multi-functional model that serves a more varied clientele, while maintaining a balance between educational, scholarly, and social objectives”.²⁵ Twining also reminds us that legal education is not confined to university law schools, that much informal legal education lies outside educational programmes and that ‘law students’ are not all on undergraduate law degrees in university law schools.

²¹ Leighton, P, op.cit. 94.

²² Hicks, A, ‘Legal Practice is an Academic Matter’ (Spring 1995) SPTL Reporter 6.

²³ Birks, P, ‘The academic and the practitioner’ (1998) 18 Legal Studies 397, recounts the joint-attempt by Oxford University and Oxford Brookes University to launch the Oxford Institute of Legal Practice and the difficulties and indeed, as he sees it, hostilities faced from the professional bodies.

²⁴ Twining, W, ‘Thinking About Law Schools: Rutland Reviewed’ (1998) 25 Journal of Law and Society 1.

²⁵ Ibid 4. The latter Twining defines as including “service to the local, or a wider community, through legal advice, participating in law reform and pressure group activities, and the critical role of legal academics in serving as a part of the conscience of the legal system and of society. The bureaucratisation of universities through such devices as research assessment tends to marginalize their social role.”

Even some of the harshest critics of the professional bodies' perceived attempts to constrain the 'academy' would acknowledge that as a discipline law has much to learn from the humanities and social sciences and that by engaging in other disciplines law students broaden their perspectives and free themselves from tutor-dominated learning.²⁶

Proposals for Change

Echoing ACLEC in 1996, the Training Framework Review favours learning outcomes for the whole period an individual is 'preparing' to become a qualified professional, at present encompassing academic, vocational and training contract stages. The Review Group states that it has drawn from educational models and methods used in other disciplines such as medicine, surveying and primary and secondary teaching and acknowledges the changing environment in which legal education and training take place.²⁷ Whilst recognising that the existing qualification scheme for solicitors has the advantage of ease of regulation and comparison, the Review Group believes that this generates inflexibility, adds to qualification costs and hinders innovation.

The review in the Second Consultation document is confined to the pre-qualification stage. It determines that, notwithstanding the call from some for greater specialisation, individuals must not be allowed to qualify with a very narrow understanding or experience of legal practice. On the other hand, it believes that the Law Society must be less prescriptive and thus advocates an 'outcomes-based framework' which would be based on "a clear specification of what all solicitors need to know, understand and be able to do and the attributes they should have on 'day 1' of their practice as a solicitor".²⁸ These outcomes are said to consist of:

- the general intellectual skills expected of an honours graduate
- core knowledge and understanding
- the ability to complete legal transactions and resolve legal disputes
- a practical understanding of the values, behaviours, attitudes and ethical requirements of a solicitor
- professional, personal management and client relationship skills.²⁹

As it stands there is little prescribed detail, certainly compared to the existing Joint Announcement, of the second 'outcome' – core knowledge and understanding. It is not clear whether this will appease those who believe that the 'academic pot' has increasingly been squeezed by the demands of the professional bodies or, as will be seen below, how the Bar Council may view such developments.

More worrying perhaps is the Review Group's apparent determination that the outcomes be achieved at specific stages. Thus it is proposed that the knowledge and understanding

²⁶ Bradney, A, 'Law as a Parasitic Discipline' (1998) 25 Journal of Law and Society 71-84.

²⁷ Training Framework Review, para.35 and Annexe 2.

²⁸ Ibid., para.45.

²⁹ Ibid., paras.49-52.

outcomes “could be gained from and assessed in a traditional academic programme”, the ‘ability to do’ outcomes located in a vocational course/practice setting and the “behaviours and attributes” developed and demonstrated in a practice environment.³⁰ If one ignores for the time being the fact that this pattern is remarkably similar to the existing model for qualification, how are these outcomes to be achieved?

The Review Group presents a series of ‘pathways to qualification’. But, whilst innovation in the design of pathways is encouraged, “the nature of the outcomes to be achieved will inevitably limit the nature of the pathways”, any of which would need to include the following “key features”:

- Completion of (at least) an honours degree or equivalent
- Learning of law and legal practice to at least an honours degree level
- A rigorous assessment strategy
- A period of work-based learning
- Successful completion of a course and an assessment covering professional responsibilities, ethics and client care
- Completion of a learning record and formal confirmation of an individual’s readiness to practise.

As indicated, the Review Group proposes ‘illustrative pathways’ that might be adopted but within an approach described as evolutionary rather than revolutionary. Thus, the first proposal is a pathway “little different from the current, prescribed routes”.

The second theme is to promote greater integration of the academic and the vocational/professional. The possibilities outlined include the further development of sandwich degrees and the integration of the CPE (the graduate conversion course) with the LPC. Greatest consideration is, however, reserved for the exempting law degree which “integrates fully the learning and assessments normally undertaken separately during a qualifying degree law degree and an LPC”.³¹

The Review Group states that it is financial constraints, in particular the greater costs of delivering skills-based courses, which have restricted the growth of such integrated degrees. Only one institution, Northumbria University, currently provides such a programme (see below). However, it goes on to suggest that the Government’s current funding proposals might remove some obstacles, at least for those universities currently offering both a law degree and an LPC citing “educational and financial benefits.” We shall not dwell on the latter, although students not infrequently mention lower costs as one factor influencing their choice of the Exempting Degree. Rather it is our intention to consider the educational benefits of an integrated approach.

³⁰ Ibid., para.48.

³¹ Indeed, it is even suggested that a “continuous pathway” combining not only the exempting route but also the work-based learning might be established by a single provider. See below for the admittedly limited existing provision at Northumbria University that fulfils this possible pathway.

An alternative approach to integration might come at a later stage, with the LPC being interwoven with periods of work-based learning. This pathway already exists to a certain extent with part-time LPCs that allow students to serve time in a training contract whilst completing the course. However, as the Review recognises, part-time study has limitations that the proposed pathway would need to address. Foundation degrees as a first step on the qualification ladder or modules from an MBA as part of the LPC are advanced as possibilities by the Review Group.³² Recognition might also be given to learning through clinical legal education, pro bono work or placement work on a sandwich degree.

The views of the Bar

Clearly, the Law Society's views on training provision are of great importance to the Bar. Indeed, certain matters: the quality of the academic stage, access to training – as a function of cost and flexibility, the “problem” of specialisation and the value of training, all within the purview of the Review, are matters on which the Bar has reported in recent years.³³ These reports show that apart from the issues of cost and value of professional training, there are marked differences between the Bar and the Law Society as to the need for action. The Bar has been unable so far to find acceptable cost reductions and, although it may consider shorter BVCs and other pupillage routes, it is considering adding value to the qualification by incorporating it as part of an LLM. This would allow a choice of the BVC/LLM or just the BVC, something supported by the Specialist Bar Associations and discussed recently by Nigel Bastin, Head of Education and Training at the Bar Council.³⁴ Bastin also comments on the lower cost of the Exempting Degree but recognises that meeting the profession's needs in this way would require thirty such law schools to produce the required numbers (see also the very similar comments by the Collyear Committee³⁵). Another possibility is a sandwich BVC incorporating a part of pupillage. Although Collyear³⁶ did not recommend it and even the Review Group was somewhat diffident³⁷, this proposal is again under consideration.

Changes to Bar training are inevitable but are unlikely to include the greater integration of existing courses within the Review Group's “alternative pathways” since professional differentiation is key to Bar Council policy.

³² See below for a comparable proposal for the Bar Vocational Course becoming an LLM.

³³ The Taskforce on Funding Entry to the Bar (Smith, 2003) is the most recent of a series of committees set up by the Bar to consider a range of problems related to training for the Bar. See also Blackburne (1989), Phillips (1990), Taylor (1991), Southwell (1992), Goldsmith (1998), Tuckey (1999), Goudie (2001), and Mountfield (2002).

³⁴ Bastin, S, ‘Can we afford the BVC and LPC?’ (Feb 2004) Counsel Magazine.

³⁵ ‘Blueprint for the Future’ (May 2000) Collyear Committee into education and training, at 2.2.12

³⁶ Ibid., at 2.2.13

³⁷ Second Consultation on a New Training Framework for Solicitors (2003) para 107.

The Exempting Degree

The Exempting Degree at Northumbria enrolled its first students in 1992 and is the only example of its type – never mind revolution, evolution seems scarce.³⁸ Whilst the Marre Report³⁹ and a consultation paper from the Law Society Training Committee⁴⁰ provided the initial stimulus, developments within the existing degree structure at Northumbria⁴¹ also contributed. As early as 1983, in its submission to the CNAA for re-validation of its LL.B, the Law School had proposed a unit entitled Legal Method II which had as one of its aims the development of “certain skills needed by lawyers, other than those developed in a traditional classroom setting”. Most notably the unit allowed for participation in a Law Clinic. Leighton implies that the growing emphasis on skills in degrees is a consequence of greater cross-fertilisation between the academic and vocational ‘wings’ of new university law schools, the former learning from the “good practice” developed by the latter.⁴² At Northumbria the reverse has been the case. However, to emphasise skills teaching thus would be misleading if it gave the impression that the Exempting Degree was designed to be purely vocational. In fact the 1992 validation document stated that the intention was to provide “a broad legal education” which would (inter alia):

“allow scope for intellectual development and for critical analysis;
enable students to develop competences that [would] serve them both as lawyers and generally;
promote confidence and self-reliance amongst students;
place law in its social, economic and political contexts;
satisfy professional requirements at both academic and vocational stages”.

Moreover, students were to be encouraged “to look beyond the immediate goal of qualification and embrace a wider critical examination of law and the legal system” and to be required to “challenge and to question accepted views and beliefs, including their own”. The outcome of the student experience was to “enable participants to succeed in a competitive, challenging and changing environment”.

The original 1992 scheme was followed in 1993 by an LL.B Exempting with French Law⁴³, and in 1996 by an LL.B Exempting incorporating the BVC. All routes have since been successfully re-validated. The requirement for validation (and re-validation) and the annual monitoring of provision is, arguably, a drawback of close involvement with the profession resulting, in Leighton’s words, in strong external regulation and heavy prescription.⁴⁴ Alternatively, the benefits of reflection ought not to be confined to students.

³⁸ For an alternative view of the reason for Northumbria’s Exempting programmes being unique, see Birks, P, ‘The academic and the practitioner’ (1998) 18 Legal Studies 397.

³⁹ ‘A Time for Change’: Report of the Committee on the Future of the Legal Profession (1988).

⁴⁰ ‘Training Tomorrow’s Solicitors: Proposals for Changes to the Education and Training of Solicitors (1990).

⁴¹ Prior to 1992 Newcastle Polytechnic.

⁴² Leighton, P, op.cit 94.

⁴³ This route included an exchange with the University of Orleans.

⁴⁴ See above.

On their first day new students on the Northumbria Exempting Degree experience the academic and the practical, in recognition of the fact that “theory grows out of the practice, and so theory informs the practitioner”.⁴⁵ Thus, for example, Criminal Procedure and Evidence are studied in Year 1 alongside substantive Criminal Law in a module entitled Crime, Litigation and Evidence. A similar approach is taken with Civil Practice and Procedure which is examined in the context of the law of Torts in Year 2. Throughout the four year degree, academic skills in research, critical analysis and evaluation are developed alongside skills required by the LPC, for example interviewing and advising, legal writing and drafting.

Similarly, students on the LL.B Bar Exempting Route will, in Year 3, at the same time as undertaking the practice elective for the Student Law Office (see below), study Conference Skills, Advocacy, and Opinion Writing together with an option, a research exercise and supervised court visits. In Year 4 they undertake Drafting, Negotiation and a second phase of Advocacy together with a second research exercise, and self-reported court visits. Over Years 3 and 4 they are also assessed in professional ethics. These arrangements have allowed for exercises between the two groups of students on the LPC and Bar Exempting routes. For example, in Year 3, students on the LPC route draft instructions to counsel for advice to students on the Bar Exempting route as a mock assessment in Opinion Writing.

Nonetheless, there is much within the programme readily recognisable to an academic from any university, old or new, and the compulsory project in the fourth year allows for the independent, critical analysis of a selected area of law or practice that is so treasured. Another feature of the Northumbria model that, if not unique, is certainly by no means common to UK law schools, is the programme of clinical legal education.⁴⁶ Students at Northumbria participate in a practice elective in Year 3 of the degree and in live client work in Year 4. The latter amounts to by far the largest clinical service in the UK in which students advise and represent members of the public under the supervision of qualified practitioners.

Whilst the Year 3 elective provides an introduction to live client work in the following year, it also allows for development of the student’s academic and practical skills including their abilities to work co-operatively and individually and conduct practical legal research. In the last two years a new approach has been adopted to the practice elective. In ‘problem based learning’ rather than begin with a body of knowledge which students then apply to a given problem (the traditional seminar question, pre-defined by prior lecture material and reading) students begin with a problem in an unfamiliar area of law and, unaided, move in stages towards a solution by identifying relevant facts and

⁴⁵ Hicks, A, op.cit 7. See also Green, T, ‘Which comes first, the theory or the practice? – The role of legal scholarship within the live client clinic’, Commonwealth Legal Education Association Conference, ‘Legal Education: 2000 and Beyond, December 1998.

⁴⁶ Still in its relative infancy compared to its development in, for example, the United States or Australia.

conducting necessary legal research. As yet it is unclear what impact this approach will have on subsequent live client work.⁴⁷

Clinical Legal Education – the Student Law Office

Arguably, the pinnacle of the students' academic achievement at Northumbria is in their work, learning and reflection in the live client programme (the Student Law Office) in their final year.⁴⁸ This paper will not dwell extensively on the merits (or otherwise) of live client work. The case has been made eloquently elsewhere.⁴⁹ Sufficed to say that the experience at Northumbria is positive and there is no tension between the academic and the practical. Indeed, the one feeds off the other. Students are placed into 'firms' of six, each firm focussing on a specific area and being supervised by a qualified practitioner. The prime objective of the clinical programme is educational, always remembering, of course, the need to ensure that the best interests of the client are served.⁵⁰ The stated aims of the Student Law Office are to:

- introduce students to real legal practice in a supervised environment and to encourage their development as reflective practitioners;
- shift the emphasis of student learning from subject-centred to a client-centred approach
- develop the skills required to become effective legal practitioners.

Compared to conventional legal services, students in the SLO handle only a few cases since learning quality is key. The programme is challenging not only to the students but to their supervisors who must resist the temptation to intervene and run the case (and who take the professional risk in making this judgement). However, anecdotal evidence suggests that supervisors find their SLO work both a fulfilling supplement, and a shift away from the abstraction of the seminar room by providing a forum in which to apply law and procedure. The challenge extends to those in the Law School who are non-practitioners with no or only peripheral involvement in the SLO. Imagine the advantage

⁴⁷ For an evaluation of the initial impact, see Sylvester, C, Hall, J, and Hall, E, 'Problem Based Learning and Clinical Legal Education: What can clinical educators learn from PBL?', (2004) 4 IJCLE 39).

⁴⁸ A clinical option has been offered at Northumbria since 1981, initially providing a service to members of the University and subsequently, in conjunction with a local law centre, to members of the public. In 1991 the relaxation of the Employed Solicitors Practice Rules enabled the expansion of the Student Law Office. In the academic year 2003-4, 116 students operated in 20 firms. The SLO has its own offices and interview rooms and in addition to administrative staff employs solicitors full-time and a case worker on the clinical work of the SLO. It is also possible for students from the Exempting Degree or from the University's free-standing LPC to be offered a training contract to work in the SLO which is an authorised training establishment. In 2002 the SLO received Specialist Quality Marks in employment and housing law from the Legal Services Commission.

⁴⁹ See Brayne, H, et al, '*Clinical Legal Education – Active learning in your law school*', 1998, London: Blackstone Press. For a recent update on the position in the UK, see Grimes, R, 'Learning law by doing law in the UK' (November 2000) IJCLE 54.

⁵⁰ That is not to deny that "the value for those in need of free legal advice and assistance is potentially considerable", Grimes, R, op.cit. 56. It is also recognised that not all clinical programmes would place the educational development of the students at the centre of their purpose, see Dickson, J, 'Clinical Legal Education in the 21st Century: Still Educating for Service?' (November 2000) 1 IJCLE 33.

of the student who has appeared before an employment tribunal in an unfair dismissal case when it comes to a seminar examining the concept of reasonableness of dismissal. Now who is the teacher and who the pupil?

A specific SLO objective is that students should reflect on the development of their skills and the ways their performance influences the progress of their client's case. Not surprisingly, therefore, reflection features significantly in assessing the two principal elements of SLO work for the Degree: practical work and a piece of written work on a subject arising from that practical work.⁵¹ For the former, students keep a personal file of their work which must include evidence of written communication, file and case management, interviewing and research. In all these areas students must also provide reflective commentary on their work and experiences. This file is seemingly similar to the Review Group proposal that prospective solicitors keep a 'learning log'.⁵² The second element of assessment is the essay. More than just a summary of the work done during the year, this might range from a critical consideration of the "practical effect of an area of academic law on the conduct or outcome of a case" to an examination of the "role of the SLO in the wider context of the provision of legal services".⁵³ A recent example of the latter consisted of a reflection on the experience of the SLO, the inculcation of ethical values and access to justice. As the student wrote:

"Before commencing the Student Law Office I had never properly thought about my values as a lawyer or as an individual. Being part of the Student Law Office soon changed that. Not only did I find myself in a legally responsible relationship with my clients I was also in a morally responsible relationship as well."

"I believe that there is a relationship between my legal education and my professional development. And as my legal education has given me a chance to assess my values that will in turn affect my professional development. I cannot have a professional value to promote justice and fairness in the legal system unless I have honesty and integrity among my personal values. The Law Office for most students will allow these values to grow along with confidence in the ability to do the job."

It is not hard to believe that for its writer, the academic and the practical had truly come together.⁵⁴

⁵¹ The importance of reflection has long been recognised, see Schon, D, 'Education the Reflective Practitioner', Paper to the American Educational Research Association, Washington DC, 1987. In his paper Schon praises not just learning by doing but learning where there is a dialogue between coach (SLO supervisor?) and student, "a dialogue of reciprocal reflection-in-action where each of them is reflecting on, and responding to, the message received from each other". The present authors' experience of observing SLO firm meetings and interactions between supervisors and firm members would confirm this model. Indeed, in the learning community which is the firm, student members conduct a similar dialogue.

⁵² Second Consultation on the New Training Framework, para.83.

⁵³ Student Law Office Manual, Northumbria University.

⁵⁴ For further views on the working practices of the SLO at Northumbria and the views of the student participants see Middleton, L, et al, (November 2000) 1 IJCLE 58.

Professional training for solicitors and barristers now includes the inculcation in students of the value of reflection. It is intended that such reflection should survive the professional stages of training into practice. Consider for a moment what is meant here by reflection:

“The act of reflecting is one which causes us to make sense of what we've learned, why we learned it, and how that particular increment of learning took place. Moreover, reflection is about linking one increment of learning to the wider perspective of learning - heading towards seeing the bigger picture.”⁵⁵

The four aspects of reflection within this description are as much applicable to developing the critical faculties of students as they are those of the staff teaching them. Arguably, the SLO, on occasion, provides supervising staff a powerful stimulus to reflect on how they acquired certain learning thereby encouraging empathy with the student and a deeper insight into the possible approaches to the object of knowledge in question.

Law and Ethics

In its First Report on Legal Education and Training ACLEC expressed a belief that “[s]tudents must be made aware of the values that legal solutions carry, and of the ethical and humanitarian dimensions of law as an instrument which affects the quality of life”.⁵⁶ As the extracts quoted above demonstrate, clinical work can help to achieve ACLEC’s desired objective that “lawyers should internalise [personal and professional values] from the earliest stages of their education and training”.⁵⁷ Such an approach would need to go far beyond the requirements of the LPC and BVC which teach ‘standards’ but require no exploration of underlying concepts and no critical analysis. Indeed, at the academic stage there is little emphasis on such issues in the Joint Announcement beyond a broad statement that students should have acquired the “ability to demonstrate knowledge and understanding of a wide range of legal concepts, values, principles and rules of English law”. There is an obvious lack of specificity in what is required. Some such as Webb perceive a need for a re-examination of the role of ethics within legal education, believing that there is much to be said for “expanding the use of clinical teaching as a vehicle for ethics education in which students must confront and reflect on the pragmatics of legal practice”.⁵⁸ As Hall and Kerrigan remind us, there is “no requirement to address the moral or jurisprudential foundations of the law”.⁵⁹ The absence of these requirements is

⁵⁵ Race, P, ‘Evidencing reflection: putting the "w" into reflection’ (2002) (ESCALATE Learning Exchange) <<http://www.escalate.ac.uk/exchange/Reflection>> quoted in Hinett K, Developing Reflective Practice in Legal Education see www.ukcle.ac.uk.

⁵⁶ Para.1.19.

⁵⁷ Ibid.

⁵⁸ Webb, J, ‘Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education’ (1998) 25 Journal of Law and Society 134-150.

⁵⁹ Hall, J, and Kerrigan, K, ‘Broadening the ethical horizon – why and how clinics can help to create reflective lawyers’ a paper presented at the Association of Law Teachers Annual Conference, Maastricht, April 2003.

compounded, Hall and Kerrigan argue, by the fact that even where law schools offer jurisprudential options, students often perceive them as irrelevant to their future careers.

In regard to the issue of ethics, as eloquently attested to by the students quoted above, part of the obvious importance of the SLO is that students begin early on to recognize the features of the relationship between an instructing solicitor, a barrister and the lay client. The process of dispelling mythologies about these relationships and reinforcing good practice and ethics is thus accelerated on the Exempting routes, something which, regrettably, on the freestanding courses often does not begin to happen meaningfully until training contracts and pupillage. For the Bar Exempting students the process is both by involvement in the SLO and through the Junior and Senior Practitioner Training elements of the BVC which employ case scenarios and exercises in ethical problems. The Bar Council is concerned about the ability of pupils to make autonomous and appropriate decisions under the Code of Conduct. Clearly, in the context of the SLO, the importance of the latter is reinforced almost daily, making more immediate what must seem to most degree students either remote and abstract considerations or matters that could be simply resolved intuitively. As Patterson argues, this confusion between ethics and personal ethics is not confined to the student body but is found widely in the professions many of whom “consider that the study of professional ethics is a barren pursuit – since they feel that they already know what it is to be a moral person.”⁶⁰

Argument on the role of jurisprudence and legal theory more generally within legal education could constitute many books. This fact alone should push the issue of its greater inclusion to the front of any discussion on the nature of legal education. Part of the explanation for the marginalisation of jurisprudence is, according to Hall and Kerrigan, the perception that it is “divorced from the remainder of the curriculum and from real life”. This is not an uncommon view among academic members of law schools not engaged in its teaching, in that the curriculum, as a reflection of ‘real life’, is seen as synonymous with a narrow view of professional practice. As Barnett, in her report of the findings of the 1993/4 survey into the role of Jurisprudence and legal theory within the law curriculum points out, “it is undeniable that jurisprudence has little *practical* relevance to some aspects of professional legal work.”⁶¹ The perception of the marginal importance of theory is then reciprocated and made concrete by the profession. This has led theory to be viewed by some, even at best, as simply a ‘bolt on’ option in law, rather than as something central to and inseparable from it. The survey results reported by Barnett show that of the 90% of UK universities that responded, only 23% agreed strongly that Jurisprudence has professional relevance.⁶² Whilst Barnett was able to state that Jurisprudence retained a central role in legal education, the commitment demonstrated in the responses of its teachers was not shared “at the institutional level by

⁶⁰ Paterson, A, ‘Legal Ethics: Its Nature and Place in the Curriculum’ in *Legal Ethics and Professional Responsibility*, (1995), Oxford: Clarendon Press, Cranston, R (ed) at 176

⁶¹ Barnett, H, ‘*The Province of Jurisprudence Determined – Again!*’ (1995) 15 *Legal Studies* 88 at 109.

⁶² Loc.cit.

many UK universities”.⁶³ If law schools choose not to take the subject seriously why should students?

Exactly how this situation arose is too complex for the scope of this paper but is undeniably connected with the evolution and purpose of the LL.B. The silence of the Joint Announcement with regard to jurisprudence raises many questions. Of immediate relevance we may ask, if students are to acquire knowledge and understanding of “a wide range of legal concepts, values, principles and rules of English law” how are they properly to do so absent the training in theoretical inquiry and philosophical technique that the study of jurisprudence affords? In what sense is the development of such intellectual skills irrelevant to the work of practising lawyers let alone future judges?

Part of what underlies this is at the root of the academic professional debate. What we might term the problem of self-perception for academic lawyers is partly a product of the history of the law degree. Anne Bottomley, writing on feminist legal theory, suggests three features of work for academic lawyers in law schools: substantive doctrinal law, research and teaching, and theoretical work (jurisprudence or a legal theoretical subject like law and literature or the study of social institutions and effects of law). For those doing theoretical work it is difficult to escape the perception of jurisprudence as a linear historical account, for those working on legal theory such as law and literature “one is definitely in the terrain marked ‘humanities’: please apply to the AHRB for funding. If, however, one’s interest is in the operation of and practice of law, then this is the terrain of the social sciences: please apply to the ESRC for funding”.⁶⁴

Bottomley argues that legal theorists

“do not have one ‘place’ in which to develop our work. In fact what it reminds us is that, whilst historically, we were viewed as one of the liberal arts, it was the dominance of the social sciences in the mid-twentieth century which enabled, but also constrained, a great deal of work on law ... Secondly, the binary of humanities/social sciences has, I think, effectively reproduced the most significant result for lawyers: a sense of the externality of theory to law and, at another level, the lack of identity for lawyers as academics and therefore as theorists”.⁶⁵

Thus, legal theorists in particular may sense the tension that exists in the relationship between academic law and legal practice – of the identity of the law teacher having evolved as “bound up in the claim to be part of the legal profession, to share its values and culture and, above all, in a commitment to law as a certain body of rules”⁶⁶ but they may also – and this is a topic for another paper – sense multiple identities within the law school and in law as a cross and multi-disciplinary subject. Beyond arguments about the

⁶³ Ibid., at 127.

⁶⁴ Bottomley, A, ‘Theory as a process not an end: a feminist approach to practice of theory’ in *Feminist Perspectives on Law*, 2000, London: Cavendish, Richardson J, Sandland R (eds) at 29.

⁶⁵ Ibid.

⁶⁶ Sugarman, D, ‘A Hatred of Disorder: Legal Science Liberalism and Imperialism’ in *Dangerous Supplements, Resistance and Renewal in Jurisprudence*, (1991), London: Pluto Press, Fitzpatrick, P (ed) at 64.

historical development of law as a subject within the academy, the absence of a 'place' for theorists could simply be viewed as the natural result of philosophical inquiry into law, the point at which law is most obviously revealed as politics through the engagement and disengagement with, for example, Marxism, Feminist Legal Theory and Critical Legal Studies.⁶⁷ A question of importance for every theorist is whether these trends represent, at least to some degree, a healthy positioning somewhere outside of the dominant structures of legal education, where a critical edge may be maintained and the speciousness of working within "intellectual traditions" recognised, or the legitimising of those structures through answering to the intellectual class interest in academic prestige which resides at the heart of the university system.

Clearly, however, if students are to begin to appreciate the "ethical and humanitarian dimensions of law as an instrument which affects the quality of life" as ACLEC requires, there must be a recognition of the centrality of theory to the study of law and a space, if not "a place", found for it within law schools and for those who wish to research and teach it. We need do no more here than cite, as Birks does, the authority of Blackstone:

".... Aristotle himself has said, speaking of the laws of his own country, that jurisprudence, or the knowledge of those laws, is the principal and most perfect branch of ethics".⁶⁸

Conclusion

Law as it is taught in universities, whether academics like it or not, is, like medicine and surveying, widely perceived not only by the public but by other members of the academy as an almost purely vocational subject and its students as prospective members of one or other branch of the legal profession. For those concerned with the future of the law school, the perception of law as purely or largely vocational is but one limitation on what law schools are and of what they might become. Limiting, of course, not only to the extent that it is true, but limiting also because it encourages the belief, even within the academy, that the teaching of law as a whole is little more than the expounding of subject specific black letter rules accompanied – perhaps not even in all cases – by some methodological exposition. It is not the purpose of this paper exhaustively to determine how this perception of law came about, much has already been written on the subject by specialists in the field of legal education, but some discussion of the probable causes is relevant here.

Arguably, the growth in the importance to universities of law courses is not a function of the recognition of the subject's intrinsic academic and social importance. A brief glance at the Universities and Colleges Admissions Service (UCAS) statistics shows that in 2003 a total of 320,182 students (an increase from 313,231 last year) were ready to commence their degrees after the 'A'level results, with law taking up 12,792 students, the most of any discipline. These numbers are significant. The strongly negative associations of law

⁶⁷ For statistics on the changing content of Jurisprudence courses, see Barnett, *op. cit.* 109 ff.

⁶⁸ Birks, P, 'Adjudication and interpretation in the common law' (1994) 13 *Legal Studies* 178.

with money that persist outside the academy may be contrasted with the discipline's near cash cow status within it. As Peter Birks commented in 1995:

“The Treasury interest is easy to read, as is also that of the university bosses to whom legal education is a product which sometimes makes best profits downmarket. They see no further than the end of their financial noses”.⁶⁹

Birks' central complaint was levelled against the restriction of the law degree caused by the professions' insistence on the foundation subjects as being “necessary and sufficient without possibility of substitution”. In this sense, money – both income and resource costs – and compulsory subjects are, it would seem, inextricably interlinked. Thus, like Marley's ghost encumbered with cash boxes, the qualifying law degree has clanged its way onward with, it appears, the certainty that the further commodification of knowledge within universities and the increased (and aptly named) auditing from outside will lead to the attaching of yet more cash boxes, and probably yet, as Dickens had it, keys, padlocks, ledgers and deeds in the further prescribing of its content.

We may ask whether there is a danger that whilst the university law schools and the professional bodies argue amongst themselves, others will dictate outcomes for them. As Kelsey states:

“In a market-driven system, student assumptions of what the market demands will increasingly dictate what courses and perspectives universities provide”.⁷⁰

In Kelsey's somewhat apocalyptic view of higher education, “[t]he university becomes a surrogate commercial business whose product is sold to customers at the competitive market price”.⁷¹ The risks here to the ‘academy’ clearly far outweigh those from the professions.

The quote above from ACLEC in its First Report on Legal Education and Training that “[s]tudents must be made aware of the values that legal solutions carry, and of the ethical and humanitarian dimensions of law as an instrument which affects the quality of life” constitutes a statement that, on a superficial level, would probably meet with universal approbation but which also encapsulates in a few words not only *the* central questions about the purposes of legal education but also a sense of the vastness of the intellectual project that lies behind them.

⁶⁹ Birks, P, ‘Compulsory Subjects: Will the Seven Foundation Subjects ever Crumble?’ (1995) 1 Web JCLI.

⁷⁰ Kelsey, op.cit. 59.

⁷¹ Kelsey, op.cit. 61. In fairness, whilst Kelsey believes that these pressures are a global development, she accepts that the position in New Zealand where she works may be “at the extreme end of the privatisation spectrum” (ibid 69). Collier, writing about the ‘new era’ for universities in the UK, believes that the ‘entrepreneurial university’ is increasingly charged with redirecting its energies towards the capitalisation and exploitation of learning. However, even he admits that there may be evidence of resistance to such dynamics in the results of the 2001 Research Assessment Exercise, see Collier, R, ‘Research Capacity, Critical Social Science and the Paradox of Socio-Legal Studies’, (Summer 2004) Socio-Legal Newsletter No.43, 1-4.

There are many echoes of ACLEC's view. For example, as has been said by Pincus:

“Law teachers are teachers like professors in other disciplines. But unlike their colleagues in some other disciplines ... the products of their intellectual processes need not and should not be measured solely by so-called scholarly research and writing. Law teachers must go beyond this and assume the responsibility of being judged for improving the quality of the legal process. They must be judged not by articles and books alone; but also by what they are doing to promote dignity, humanity, and justice for individuals through the legal process; and by what they are doing to this end in the process of providing legal education to future lawyers”.⁷²

Such an argument, though, addresses only certain aspects of the responsibilities that educators in law may be said to have. It nonetheless underscores a vital point, that none of this means that academic law is not or should not be connected with the work of the legal profession – in fact, quite the reverse, as the Northumbria Exempting programmes show.

Perhaps the best way of demonstrating what is meant here by the appeal to “*the* central questions about the purposes of legal education” is by reference to the work of John Dewey commented upon here by Noam Chomsky in a speech entitled Democracy and Education – the title of one of Dewey's monographs:

“Let me return to one of Dewey's central themes, that the ultimate aim of production is not production of goods but the production of free human beings associated with one another on terms of equality. That includes, of course, education ... The goal of education, to shift over to Bertrand Russell, is “to give a sense of the value of things other than domination, to help create wise citizens of a free community, to encourage a combination of citizenship with liberty, individual creativeness, which means that we regard a child as a gardener regards a young tree, as something with an intrinsic nature which will develop into an admirable form given proper soil and air and light.” [Russell and Dewey agreed] on what Russell called this humanistic conception ... the idea that education is not to be viewed as something like filling a vessel with water, but rather assisting a flower to grow in its own way ... in other words providing the circumstances in which the normal creative patterns will flourish”.⁷³

A key and very simple problem with which the professions struggle intractably is in deciding what they want from law schools and how best to secure it. At the heart of this problem lies an educational paradox. Anecdotally, firms of city solicitors are often heard to say that they prefer candidates who have pursued the CPE conversion pathway by

⁷² Pincus, W, ‘Lawyers’ Professional Responsibility’ (1969) 22 Journal of Legal Education, reprinted in ‘Clinical Education for Law Students: Essays by William Pincus’ (1980) CLRP 37-68.

⁷³ Chomsky N, ‘Democracy and Education’: Mellon Lecture, Loyola University 1994.
<<http://www.zmag.org/chomsky/talks/9410-education.html>>

which, in nine months, they satisfy the academic requirement for professional training.⁷⁴ We might ask, what is the difference between these students and those who have qualifying law degrees? First, and obviously, the CPE candidate will have studied only the seven foundation law subjects whereas qualifying degree students will study these over a little more than half of their course and although they are not required to study more law, normally of course they will. One must also consider the argument that

“[t]he fixed list of compulsory subjects is the most obvious symptom of an attitude to legal education which weakens English legal science ... There is so much that has to be done in each compulsory module that superficiality is inevitable”.⁷⁵

The paradox then is this: why do the legal professions seemingly prefer those students who – either by having studied a CPE or a prescribed qualifying degree – have studied less law than they otherwise might? There is no ready answer to this.

Of course, the issue of the content of the qualifying law degree is canvassed by the Training Framework Review Group only to the extent that it refers to concerns about its quality without, as has been pointed out, providing any detail or evidence to support these concerns.⁷⁶ Perhaps, though, an indication of how to resolve the paradox above lies with the Review Group’s suggestion of multiple pathways and greater diversity in training. The limiting factor is that these pathways all continue to maintain an artificial distinction between different stages of training. The truth, as Birks has it, is that

“There is no opposition between serious academic study of law and the needs of the practitioner ... The law and legal education are organically linked and no more than medical science can do without medical schools, neither can dispense with strong law schools in the universities”.⁷⁷

There is no one type of law school. It can only be to the educational good that this diversity is maintained. There is not only room, but a need, for both traditional academic and more vocationally inclined law schools. Indeed, it is contended that the Northumbria Exempting Degree demonstrates that these two need not be strange bedfellows. What the professions should consider is whether maintaining a formal equality by, for example, prescribing the content of the qualifying law degree and restricting the freedom of law schools is not actually to risk inviting in a democracy of mediocrity rather than helping to create wise citizens capable both of recognising and upholding the ethical and humanitarian dimensions of law as an instrument which affects the quality of life. Someone must be trusted. Let it be the law schools.

⁷⁴ A perspective which Birks states is not shared by all practitioners but which he also attributes to the professional bodies, ‘The academic and the practitioner’ (1998) 18 *Legal Studies* 397 at 403-4.

⁷⁵ Birks, P, ‘Compulsory Subjects: Will the Seven Foundation Subjects ever Crumble?’ (1995) 1 *Web JCLI*.

⁷⁶ See the Response of the Society of Legal Scholars to the Second Consultation on a New Training Framework for Solicitors, <http://www.legalscholars.ac.uk/education/sol2.pdf>

⁷⁷ Birks, P, ‘Adjudication and interpretation in the common law’ (1994) 13 *Legal Studies* 178.